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NOTES OF THE WEEK

Borstal or Prison ?

Although a court in considering the suitability of passing a sentence of borstal training is not bound by the recommendation of the Prison Commissioners, it is generally undesirable that such a sentence should be passed if the Commissioners have reported that in their opinion the defendant is not suitable for such treatment, *R. v. Tarbotton* [1942] 1 All E.R. 198 ; 106 J.P. 44. In *R. v. Charteris and Reed* (*The Times*, November 5) the Court of Criminal Appeal again applied this principle. The appellants, who appealed against sentences of borstal training, had pleaded guilty to charges of housebreaking and burglary and had asked to have 36 other charges taken into consideration. The Prison Commissioners had reported that they did not consider them fit subjects for borstal training, and that the appellants showed no intention to co-operate. The Court of Criminal Appeal substituted sentences of three years' imprisonment.

Before the Court was also the appeal of one Fall, who had been similarly sentenced, and in whose case also the Prison Commissioners' report was against such a sentence. In this case the Lord Chief Justice said that as the appellant, who was aged 20, was too young for corrective training the sentence of borstal training must be altered to one of three years' imprisonment.

In *R. v. Boath*, decided on the same day, the Lord Chief Justice said that the Court was in a difficulty because of the provisions of the Magistrates' Courts Act and the Criminal Justice Act. The appellant, who had previously been put on probation, was convicted of stealing lead and sent to quarter sessions for sentence after pleading guilty at the magistrates' court. The committal was under s. 28 of the Magistrates' Courts Act with a view to the passing of a borstal sentence, and such a sentence had been passed. The power of quarter sessions was limited, if it did not pass a sentence of borstal training, to a maximum sentence of six months' imprisonment, that being a short sentence which would be unsatisfactory. Accordingly the sentence of borstal training would stand.

It will be remembered that where the committal to quarter sessions is under s. 28 of the Magistrates' Courts Act the power of quarter sessions is either to pass a sentence of borstal training or to deal with the offender in any other way in which the magistrates' court could have dealt with him.

The Home Secretary and The Howard League

Addressing a meeting of the Howard League for Penal Reform at Caxton Hall, Westminster, on November 5, the Home Secretary paid tribute to the value of the work of the League in keeping the questions of penal reform in the forefront of public notice, stimulating the administration both by well-informed criticism and by constructive suggestions and help.

Dealing specifically with one proposal made by the Howard League, Mr. Butler said he intended that the suggestion that there should be an institute of criminology should be seriously considered, not only by the Government, because it was not really their business, but also by the universities. Crime and its treatment seemed to him to be no less a subject for study and teaching by the universities than a number of other social phenomena.

The recognition by the authorities that in penal reform they can be assisted by voluntary associations and individuals, and by the universities, has for some time past proved its value. Mr. Butler referred, not for the first time, to his own deep interest in penal reform, and his speech, which covered a wide field, justifies the hopes of those who see in him a Home Secretary who will initiate reform and encourage experiment.

Prison Work

The vexed question of prison labour is to be tackled with the assistance of an industrial adviser, who it is to be noted will act in a voluntary capacity. He is Mr. Albert Healey, who has had much experience in both industrial and social work. In finding work for prisoners there is need for co-operation with

the trade unions, and the Home Secretary said the Home Office was in consultation with the T.U.C. and he felt that the difficulties of the past would be overcome. For our part, we feel that in these days of full employment there need be no misgivings about prisoners competing with free men and their jobs.

Mr. Butler referred to the Bristol hostel scheme whereby selected preventive detention prisoners earn their living in ordinary employment outside the prison, and said it was to be extended to other types of prisoners serving long sentences. Before long, he hoped, it might be possible to see a chain of hostels throughout the country, not all within prison walls.

This policy may we think, prove to be the answer to one of the major problems relating to long term prisoners. In the past the sudden change from prison life, perhaps under maximum security conditions, to complete freedom, has often led to a speedy return to crime and to prison. The hostel may prove to be the necessary intermediate change. In the words of the Home Secretary, "We must prepare prisoners for what may be a greater shock than coming into prison—the shock of going out."

It is noteworthy that in discussing the hard core of prisoners who return to prison again after their first sentences and the question of classification, the Prison Commissioners are consulting prisoners as well as prison officials.

Prison Staff

It was satisfactory to learn from Mr. Butler's speech that there had been a sudden and marked improvement in the recruitment of prison staff, although, to attain the objects of their policy the authorities might still need anything up to a thousand more.

Evidently close attention is being devoted to the training of staff. The Home Secretary referred to the joint team-work courses for executive and specialist staffs, one of which, he said, was addressed by an ex-prisoner. Selected assistant governors, in the universities and elsewhere, are now being given full courses in social case work, and all assistant governors will now have a six months' initial training course in which emphasis will be laid on this aspect of their work.

Prostitution in Japan

A recent article in the *Manchester Guardian* has given some interesting glimpses of the difficulties occasioned in

Japan by an attempt to change the law with regard to prostitution.

Prostitution in Japan has for many centuries been centred around an elaborate network of licensed brothels. Western observers have often reported favourably on the standards of inspection and of hygiene insisted upon in the "yoshiwaras"—which is what these houses are called.

But now a law has been passed which will, at one stroke, abolish them. It comes into force on April 1 next, and no one seems to be sure what pattern will emerge from the sweeping changes which the new law will entail. But what the *Manchester Guardian's* correspondent tells us has quite a familiar ring for western ears. Already, he says, there is "an increase in the number of prostitutes in some 'red light' districts as brothel operators attempt to reap the maximum profits while the going is good. They are meanwhile hatching plans for circumventing the law and staying in business, ranging from bribery and the conversion of brothels into 'hotels' and 'rooming houses' to the development of the 'call-girl' system and the operation of 'driving and sight-seeing clubs'". . . .

The trouble, as we see it, is just the same in Japan as the Wolfenden Report revealed it to be over here. Prostitution involves two parties in the immoral act pursued: any attempt to tackle it merely from the female angle will simply result in changes of name and venue for the services which the male element will still be able to seek without legal risk to itself. Neither prostitution as a social fact nor its various commercial permutations will ever be "stamped out" so long as a numerically large and morally unscrupulous male clientèle is willing to pay for its satisfaction, and stands in no danger of legal sanction. It will be interesting to learn how events in Japan shape themselves when the law becomes effective.

Road Traffic Act, 1956: Further Provisions in Force

The Road Traffic Act, 1956 (Commencement No. 6) Order, 1957 [1957 No. 1840 (c. 19)] brings further provisions of the Act of 1956 into force on December 1, 1957.

The first of these is s. 4 (7) which provides that where a speed limit is in force, under s. 1 of the Act of 1934, not because there is a relevant system of street lighting but because that length of road is deemed to be a road in a built-up area a person shall not be convicted

of a speed limit offence there unless the fact that that length of road is deemed to be such a road is indicated by means of traffic signs as provided for in s. 1 (7) of the Act of 1934, as amended by the Act of 1956.

The second is that part of s. 26 (1) which increases the penalty for offences against orders made under s. 46 (2) of the Act of 1930. By the bringing into force of this part of s. 26 (1) and of sub. para. 5 of para. 12 of sch. 8 the maximum penalties are increased to £20 for a first offence and £50 for a subsequent offence.

The third is s. 33, which amends s. 46 of the Act of 1930. Subsections (1) and (9) of the said s. 46 are repealed, the circumstances in which the Minister may make orders under s. 46 (2) are defined, and the provision which may be made by any such order is set out. Orders containing some of the provisions may be made by the appropriate council without requiring confirmation by the Minister. There are other amendments introduced by s. 33 including one in s. 33 (8) that s. 46 of the Act of 1930 and s. 29 (4) (5) and (6) of the Road and Rail Traffic Act, 1933, shall cease to apply to the London Traffic Area, subject to a saving provision in respect of orders already in force there.

The fourth provision of the Act of 1956 brought into force by the new Order is s. 34, the side note to which is "amendments as to traffic regulations during road repairs, etc."

The fifth is s. 55 (4) which affects certain provisions of Scottish Acts; and paras. 2, 3 and 20 of sch. 8 are also brought into force.

In part II of the schedule to the new Order are set out those parts of sch. 9 to the Act of 1956 (the repeal schedule) which now become effective. They are:

1. 41 and 42 Vict. c. 51 S. 104.
2. 55 and 56 Vict. c. 55 S. 385, paras. (1) and (3).
3. 20 and 21 Geo. 5, S. 46 (1) and (9).
4. 1 Edw. 8 and 1 Geo. 6, c. 5 In sch. 2 in the entry relating to s. 47 of the Act of 1930, the words "and (8)." are omitted.

The Misuse of Fog-lamps

Regulation 10 of the Road Vehicles Lighting Regulations, 1954, is concerned with the "character of front lamps" and in para. 2 (a), it provides that the beam of light emitted from a "headlamp" must be, as one alternative, permanently deflected downwards to such an extent that it cannot dazzle anyone on the same horizontal plane as the vehicle whose eye level is not less than 3 ft. 6 in. above the ground and

who is more than 25 ft. from the lamp. The proviso at the end of the paragraph is, "a lamp (unless it is used only in conditions of fog or while snow is falling) shall not be held to comply with sub-para. (a) of this paragraph unless it is also so fixed that its centre is not less than 2 ft. 2 in. from the ground in the case of a vehicle to which reg. 9 of these regulations applies, or 2 ft. from the ground in any other case."

All too frequently on the roads one sees a vehicle approaching with a single dazzling searchlight beam which has a blinding effect on approaching drivers, and in many cases it would be found, on examination, that this light was emitted from a fog-lamp placed less than the requisite 2 ft. 2 in. or 2 ft. from the ground. The *Liverpool Daily Post* of October 17 reports the case of a lorry driver who was using such a light and he was fined £1 and ordered to pay £3 19s. 8d. costs for a contravention of reg. 10. The police officer prosecuting said that the practice of using such lamps, in normal weather, on heavy lorries was becoming all too prevalent. In this case an accident resulted because an oncoming driver was blinded by the light.

It occurs to us that in such a case, quite apart from the lighting offence, it might properly be alleged that where another driver is actually inconvenienced and/or endangered the driver of the vehicle with the offending light is driving without reasonable consideration for other persons using the road.

Policemen "At Home"

The opening of a new police station may not seem to be a matter of outstanding interest, but it can be made the opportunity for stimulating good relations between police and public. A newspaper report of the replacement of what was apparently a bad example of a police station by a new one with all the latest improvements, including modern cells, and what are now called "amenity rooms" for police officers, was made something of a local occasion in Huntingdonshire, and the station was open to the public on four days, with police officers showing them round.

Although most people have no desire to frequent police stations, with which they associate being "locked up," some have found by experience that they are places to which they can resort when they are in need of help or information. The idea of inviting the public to come and have a look round a not unattractive

building under the guidance of a friendly policeman has no doubt been adopted in other places, but we have not often heard of it. Contacts made in this way should promote interest and understanding, and make a small contribution towards good relations.

The Defendant's Age

A lady summoned for a parking offence is stated in a newspaper report to have asked whether the police officer was entitled to compel her to give him her age. To this the clerk is said to have replied that she was not obliged to give it, but that if it was regarded as important and she refused she might be charged with obstructing the officer in the execution of his duty. It was, he said, common practice for the police to ask the question.

We do not know whether it is a practice common to all parts of the country, but there is no particular harm in it if all that the policeman does is to ask persons whom he is reporting for an offence if they mind giving their age. It is likely that many will have no objection but that many others will much prefer to decline. Since the police have admittedly no power to demand it as a matter of law, it seems to follow that a defendant who refuses to give his age cannot be said to be committing the offence of obstructing the policeman in the execution of his duty. The defence would point out that it was not his duty to ask the question, but only, at most, a convenient practice.

There are cases in which the age of the defendant is material to the offence alleged, such as the one of driving when under age, an example which the lady herself quoted. There is also the question of the appropriate court in which proceedings are to be brought, when it appears that the defendant may be a juvenile. Then there is obvious justification for the inquiry, but generally we should consider it to be a question that may be put but not pressed.

Publicity for Mental Health

Dr. Raymond W. Eldridge, chief assistant medical officer in Lancashire, expressed the view at the recent annual conference of the Women Public Health Officers' Association (we quote from the *Manchester Guardian*) that the mass of emotional and mental ill-health which exists today constitutes the greatest challenge to public health workers. Pointing out that mental and physical health were inseparably connected, he said the army of public health visitors in daily contact

with mothers and children and other members of the family were a great potential force for bringing people to a healthy life. They could do much to get rid of the deep-rooted prejudice in people's minds about the word "mental."

The question of publicity and the right kind of publicity was of course one of the matters which was considered by the Royal Commission. It was admitted that the general public know more about mental illness and are more sympathetic to people suffering from it than ever before. But there is, nevertheless, still a great deal of ignorance and prejudice towards anything "mental" which will not be overcome if it is ignored or discounted. Public opinion in general is moving towards a more enlightened attitude, which is fostered and encouraged by the progress which has been made during the last 50 years in the understanding and treatment of mental disorders. But those who have never had personal contact with the mental health services are almost completely ignorant of how they work in practice. Most people know even less about mental deficiency. On the other hand, increasing popular interest in the nature of mental disorders and a growing public sympathy with handicapped children, particularly the physically handicapped, are bringing some people to a more understanding attitude towards children who are born mentally handicapped or deformed.

It is clear that the public health officer, and especially the health visitor, can do much, in an informal way, to remove the prejudices which exist, and may even still exist when, as we hope, there is a drastic alteration in the law. Those who are in a position to do so should therefore heed the advice of Dr. Eldridge. They can explain that hospital treatment is often just as important in mental as in physical illness and clear the air of prejudices and misconceptions. In saying this we do of course realize that in many respects there can be no real advance, and therefore removal of misgivings, until the law has been altered.

Conversion of Superannuation Benefits

The Local Government Superannuation (Benefits) Regulations, 1954 give an option to convert retirement grants or short service grants into annual pensions for life, subject to notice being given as prescribed by reg. 20. The option is not often exercised in practice and this is not at all surprising in view

of the financial disabilities suffered by the optant because although the lump sum payment is not subject to income tax the annual pension is. Annuity anomalies were recognized and explained by the Millard Tucker Committee of 1954 which reported on the taxation treatment of provisions for retirement. Their report said "Something which can be said to be in the nature of an anomaly does arise, however, where an approved pension scheme is permitted to pay part of the total benefit in tax-free lump sum form, and where that lump sum is subsequently used to purchase an annuity. Since we have recommended that that limited amount of benefit may emerge tax-free, even though it comes from an untaxed build-up, it seems only logical to extend to an annuity bought with that lump sum our recommendation . . . that it should be taxable only on its interest content." Section 27, Finance Act, 1956, gives effect to this recommendation: it provides that so much of a purchased "life annuity" as represents a return of the purchase price paid is to be exempt from taxation and thus

removes a long-standing grievance of the taxpayer.

But the section covers only "purchased life annuities" and such an annuity is defined as one granted for consideration in money or money's worth in the ordinary course of a business of granting annuities on human life. It is specifically laid down that the section shall not apply to any annuity where the whole or part of the consideration for the grant of the annuity consisted of sums satisfying the conditions for relief from tax under ss. 219 or 225 of the Income Tax Act, 1952, or s. 23 of the Finance Act, 1956 (certain life assurance premiums or pension contributions). The section has no application therefore to pensions payable under the Local Government Superannuation Acts, 1937 to 1953.

Any officer who wishes on retirement to convert his lump sum payment into an annual sum should therefore purchase an annuity from a life insurance company. Apart from the tax angle he will secure better value for money in another way. The conversion tables used with the Benefits Regulations were

prepared by the Government Actuary in 1954 and are a good deal less favourable than those of the companies, as the company tables reflect the higher interest now being earned on life or annuity funds.

An example shows the differences.

An officer aged 65 who converts a lump sum of £2,000 into an annual pension payment will receive £199 per annum subject to tax liability. If his other income is sufficient to make him liable for tax at 8s. 6d., and the two-ninths age allowance has been exhausted, his £199 pension will be worth only £114. On the other hand, an annuity of £219 can be purchased from a life company for £2,000: the tables used by the Inland Revenue show that £141 of this amount is regarded as capital element and tax is therefore payable only on the balance of £78 and would range from nil where there was no other income to £33 if the full rate of 8s. 6d. were payable. In the latter case, therefore, the annuity would represent a net income of £186 compared with £114 from conversion under the Benefits Regulations.

LARCENY BY A TRICK AND FALSE PRETENCES—II INCOMPLETENESS OF THE TRANSACTION

[CONTRIBUTED]

To ascertain whether an offence is false pretences or larceny by a trick it is necessary to ascertain whether the owner did or did not intend to pass the property in the goods or money. If the goods have been obtained by a misrepresentation as to identity the intention of the owner in this respect can be found by ascertaining the effect the misrepresentation had upon his mind. If there is no misrepresentation as to identity and the goods are obtained by some other fraud, the intention of the owner must be sought from other facts. It is suggested that the completeness or incompleteness of the transaction will provide the clue to this intention. If the transaction is complete the property will have passed; if it is not then possession only will have been given.

It must be understood that the transaction referred to is the actual handing over of the money or goods concerned. Usually this is only part of a transaction. For instance, when goods are purchased the transaction comprises both the payment of the price and the delivery of the goods. In this sense the handing over of the goods or the money is only part of the transaction.

For the purpose of ascertaining the intention of the owner where larceny or false pretences is alleged, however, "the transaction" refers only to the handing over of the money or goods which are the subject of the charge.

It is in this limited use of the term that it is suggested that the completeness or incompleteness of the transaction can

indicate the intention of the owner of the property. And there are two cases which illustrate the point.

The first is *R. v. Russett* (1892) 56 J.P. 743, in which the property in money was held not to pass, the transaction being incomplete. The other is *R. v. Fisher* (1910) 74 J.P. 427 in which the property was held to have passed because the transaction was complete.

The facts of *R. v. Russett* were that the prisoner agreed at a fair to sell a horse to the prosecutor for £23 of which £8 was to be paid to the prisoner at once and the remainder upon delivery of the horse. The prosecutor handed over the £8 to the prisoner who signed a receipt for it. The receipt stated that the balance was to be paid on delivery. The prisoner never delivered the horse to the prosecutor, but caused it to be removed from the fair. The jury inferred that, in the circumstances, the prisoner had never intended to deliver the horse. The prisoner was convicted of larceny. On appeal the conviction was upheld, and it was held that the owner of the money did not intend the property in it to pass to the prisoner, even though during the course of his evidence he said, "I never expected to see the £8 back but to have the horse."

In the course of his judgment, Lord Coleridge, C.J., referring to the distinction between cases of larceny and of false pretences, said, "When the question is approached it will be found that all the cases, with the possible exception of *R. v. Harvey* (1787) 1 Leach 467, as to which there may

be some slight doubt, are not only consistent with, but are illustrations of, the principle which is shortly this. If the possession of the money or goods said to have been stolen has been parted with, but the owner did not intend to part with the property in them, so that part of the transaction is incomplete, and the parting with the possession has been obtained by fraud—that is larceny."

Hawkins, J., said: "In my opinion the money was merely handed to the prisoner by way of deposit, to remain in his hands until completion of the transaction by delivery of the horse. He never intended, or could have intended, that the prisoner should take the money and hold it, whether he delivered the horse or not. The idea is absurd; his intention was that it should be held temporarily by the prisoner until the contract was completed, while the prisoner knew well the contract never would be completed by delivery; the latter therefore intended to keep and steal the money."

R. v. Fisher, supra, concerned a swindle effected by Fisher and another man, S, upon an auctioneer. They arranged that Fisher should take two bicycles to an auction for sale, which he did. S, in pursuance of the arrangement, then went in and bid for the bicycles which were knocked down to him. S did not pay the auctioneer, but Fisher, taking advantage of the auctioneer's practice to pay out before he received payment from the purchaser, went to him and secured payment. Both men were found guilty of larceny by a trick, but the Court of Appeal quashed Fisher's conviction.

Delivering the judgment of the Court, Darling, J., quoted the passage from the judgment of Lord Coleridge in *R. v. Russett, supra*, set out above. He then went on to quote from the judgment of Kelly, L.C.B., in *R. v. MacKale* (1868) 32 J.P. 405 as follows: "The distinction between fraud and larceny is well established. In order to reduce the taking . . . from larceny to fraud the transaction must be complete. If the transaction is not complete, if the owner has not parted with the property in the thing and the accused has taken it with fraudulent intent, that amounts to larceny."

Referring again to *R. v. Russett*, Darling, J., quoted the following passage from the judgment of Pollock, B.

"My mind has therefore been directed to the facts of the case in order to see whether the prosecutor parted with his money in the sense that he intended to part with the property in it. In my opinion he certainly did not."

Darling, J., then went on: "Looking at the facts of this case with the same object, we can only come to the conclusion that, although deceived no doubt as to what really happened as to the sale of the bicycles, the auctioneer, through his clerk, did intend to part, not only with the possession of £2 3s., but he intended to part with the property in the money."

It will have been observed that in both cases the Judges emphasised that their conclusions were arrived at from a consideration of the facts. They were applying an established principle of law to certain facts and not enunciating a new principle.

Furthermore, the part of the transaction which is held to be complete or incomplete is the parting with the property in the money or goods. So that in *R. v. Russett* if the prosecutor had handed over the whole of the money he would almost certainly have parted with the property in it as well as possession because there would have been no evidence to support the proposition that he did not intend to part with the property. As it was, it was held that he only parted with £8 as a deposit, as a sum to secure the article for sale in the future. The

property in that sum would have passed to Russett at the time that the balance of £15 was paid and the horse handed over.

Ordinarily a retail sale is not complete until the goods are delivered and the price paid, see *Sale of Goods Act, 1893*, s. 28. This, however, does not prevent either the purchaser or the seller from completing the sale before receiving the goods or money if that is an agreed part of the transaction. When it is necessary to ascertain whether the property has passed in cases of larceny by a trick, therefore, it is necessary to examine the facts surrounding the transaction to see if there is evidence that the owner of goods or money did not actually part with the property in them although he did willingly part with possession.

In the two cases already referred to no difficulty is experienced in concluding that in the one case the transaction was incomplete (*R. v. Russett*) whereas in the other case it was complete (*R. v. Fisher*).

It is now necessary to see if the proposition that the completeness or incompleteness of the transaction is a reliable guide to the discovery of the owner's intention by applying it to other sets of circumstances.

In *R. v. Collins* (1923) 87 J.P. 60, the man Collins had a cash account with a firm who supplied shoes. He called upon the prosecutor and showed her samples of the shoes, whereupon she ordered some and paid for them. Collins did not place an order for the shoes with his firm and appropriated the money to his own use. It was held that he could not be convicted of larceny as there was no evidence that the prosecutor had not intended to part with the property in the money.

Now, at first sight it might seem that the transaction in this case was not complete, and that consequently the property in the money would not have passed. But it must be emphasized that it is that part of the transaction concerning the handing over of the money which is under consideration—not the transaction as a whole. In his judgment Lord Hewart, C.J., referred to *R. v. Russett, supra*, and said, "It was held in that case that the money was handed over to the prisoner as a deposit, and that there was no passing of the property in it."

"It is argued here that that case governs this case, but in this case there is no evidence that the money in question here was handed over by way of deposit, and there is no evidence to show that the owner did not intend to part with the property in the money. The case is, therefore, distinguishable, on the facts, from *R. v. Russett*."

The position is, then, that in the absence of evidence to show that the property was not intended to pass it will, in an ordinary transaction, be held to have passed with possession. In *R. v. Russett* the fact that the £8 was paid as a deposit was found to be sufficient evidence to contradict the normal assumption that the property had passed.

In *R. v. Collins* the transaction so far as the passing of the money was concerned was complete, and therefore the property had passed. Compare this with the facts of a case before the magistrates referred to at (1941) 105 J.P.N. 191. Members of the A.F.S. in a certain district arranged that they should collect donations from friends to create a fund for helping air-raid victims. One member made an unauthorized house to house collection and misapplied the proceeds to his own use, it being suggested that he used his collecting card to allay suspicion. He was convicted of larceny by a trick.

It might seem that these facts cannot be distinguished from those of *R. v. Collins*, but the distinction is that the money handed to the A.F.S. member was handed to him for a specific purpose—that it should be placed in the fund. In other words he was only given possession of the money to pass on to the organizers of the fund. The transaction con-

cerning the parting with the possession of the money was incomplete until the money was placed in the fund. There was, in fact, evidence upon which the Court could find that the owners of the money had not intended that the property in it should pass to the fraudulent collector.

C.T.L.

IN A FEW LINES

AN ARTICLE ON THE VALUE OF THE ROUGH SKETCH

By CHARLES BREAKS

The Chinese have a saying—"a little picture may convey more than a mass of words"; in a few lines, a rough sketch, perhaps a very rough sketch, may help in the assessment of culpability or the freeing from blame, especially where road accidents are concerned.

The scope and usefulness of a rough sketch also extends to the scene of a crime, but in the compass of this article it is only intended to give a lead as to how "the sketch made at the time or soon afterwards" can be of vital importance to the individual or individuals immediately concerned—then, afterwards to those whose task in law will be to unravel facts, maybe from really voluminous statements, the formulating of clear opinion, the assessment of negligence and the appraisal of damage.

The delineation of a Da Vinci or the academic drawing of a master draughtsman or architect is not necessary. A few lines, curves and marks in a notebook, on the back of an old envelope, on an odd scrap of paper, the margin of a newspaper, or on the blank inside of an opened cigarette packet, can carry the sum and substance of what is seen first-hand and what might easily slip the memory. The making of the sketch is in no way dependent on particular conditions of light or weather. Daylight obviously is desirable, but the sketch can be made by the aid of headlights or flashlight.

Remember it is of things seen actually on the spot before changes of weather, obliteration of marks by traffic, removal of vehicles, etc., have taken place. The whole scene can be altered by these conditions in a very short space of time, never to be the same again. There should be no doubt whatever that the sketch made has authentic connexion with the particular incident; it should not be taken for granted that every skid mark, for instance, has been made by the vehicle immediately involved in an accident. Some well defined skid marks may have no connexion with the particular occurrence calling for a sketch. One has known most alarming looking marks on the road surface holding no undue significance whatever, except that severe braking had been done and the resultant marks remaining visible for days afterwards, even weeks; so, in your rough sketch skid marks and your own symbols that may refer to pool or pools of oil, water or blood, broken glass, etc., must be relevant.

Fragments from colliding vehicles, articles of clothing—a variety of items can be thrown a considerable distance by the force of a collision. The position of such items in relation to point of impact should be shown in the sketch. Lumps of caked mud that have fallen from underneath wings, mudguards or running boards, give a guide to approximate point of impact on the roadway.

In the case of a non-stop vehicle, if there is the imprint of tyre or tyres beginning at or at the end of a skid, it will certainly assist if the pattern of the tread is noted, i.e.,

diamond or zig-zag patterned, parallel lined, curved, etc.; various makes of tyres having their distinctive mouldings.

Marks on the edge of a kerb, along the grass verge, on walls or railings may be just as important as marks on the roadway. When noting measurements, they should be as accurate as possible, but it is well to remember that in serious or fatal accidents, the police, legal representatives, insurance assessors of parties concerned, will endeavour to obtain accurate measurements if at all possible, at a later period. Do not risk your life and limb by going unaided into the middle of a busy road to pace out or measure distances or lengths of skid marks.

Where a vehicle or vehicles have to be quickly moved to obviate traffic congestion and to avoid creating further accidents, a mark scratched on the road surface with anything (a piece of brick, chalk, stone, tool) anything that will be visible afterwards, *against each tyre*, will help later in determining where the particular vehicle came to rest.

Do not forget to note the time and date the sketch was made; whether roadway was wet or dry; type of street lighting; shadows of buildings or trees if it is night and anything of your own observation that you think is fact and may be helpful.

The foregoing hints in the making of a rough sketch are intended to help in the quick appreciation of an occurrence on the road where the reader may be involved directly or indirectly. An appreciation which, however roughly sketched may be a very deciding factor at a later date—vital evidence made on the spot in a very few lines when "a little picture may convey more than a mass of words."

ADDITIONS TO COMMISSIONS

HEREFORD COUNTY

Francis James Rennell, Baron Rennell, K.B.E., C.B., The Rodd, Kington, Herefordshire.

RUTLAND COUNTY

Anthony Gerard Edward, Earl of Gainsborough, Exton Park, Oakham, Rutland.
Thomas Charles Stanley Haywood, Gunthorpe Hall, Oakham, Rutland.

SOUTHAMPTON BOROUGH

Bernard Henry Dale, Kentford House, Wellow, Hants.
Mrs. Hartie Nellie Eastburn, 66 Westend Road, Bitterne, Southampton.
Kenneth Arthur Lawrence Powdrill, Chantreys, Bassett Crescent East, Southampton.
Alan Boyes Weir, Heathers, Bassett Wood Drive, Southampton.

SWANSEA BOROUGH

Bernard Howell Cameron Hastie, The Dingle, Horton, Gower, Swansea.
Mrs. Margaret England Jones, 7 Pantygywydr Road, Uplands, Swansea.

ANOMALIES AMONG THE OFFICERS

In general local authorities are free to appoint officers as they choose. There are, however, particular exceptions and the matter is likely to be of increasing interest and importance as the current proposals for the re-organization of local government take shape.

The Local Government Act, 1933, ss. 105-107 empowers councils of counties, boroughs, urban and rural districts to appoint such officers "as the council think necessary for the efficient discharge of the functions of the council." This Act, and others, enacts in more detail what must be done regarding the appointment of senior officers.

We give some examples.

The 1933 Act, s. 98, requires the county council "to appoint a 'fit person' to be clerk of the county council: before appointing him the council must ascertain whether he would be willing to accept the office of clerk of the peace of the county and shall have regard to his fitness to perform the duties of that office." Section 99 (as amended) makes it obligatory on the council to obtain the approval of the Minister of Housing and Local Government to the salary to be paid to the clerk, while s. 100 enacts that the clerk of a county council cannot be discharged from his office without the consent of the Minister, and any dispute as to whether a clerk has become incapable of discharging with efficiency the duties of his office must be referred to the Minister, whose decision is final.

There are no similar provisions regarding salary or dismissal in the case of clerks of borough, urban or rural district councils.

As with clerks, treasurers of local authorities are required to be "fit persons": a vacancy in the office of county treasurer must be filled within four months after its occurrence but a vacancy in the office of borough treasurer (or town clerk) must be filled within 21 days. Sections 102, 106 and 107 of the 1933 Act enact that the offices of clerk and treasurer are not to be held by the same person or by persons who stand in relation to one another as partners or as employer and employee.

There is no requirement that salary shall be approved by the Minister, neither does dismissal require his consent.

Section 104 of the 1933 Act requires a county council to appoint a "fit person" to be county surveyor. Section 17 (2) of the Ministry of Transport Act, 1919, enables the Minister to defray half the salary and travelling expenses of the engineer or surveyor of a local authority responsible for the maintenance of classified roads, subject to the appointment being approved by the Minister. Dismissal of such a surveyor requires the consent of the Minister.

The differences between treasurers and surveyors were emphasized when both the treasurer and the surveyor and public health inspector of the Tenby borough council were dismissed last year. The treasurer was not able to appeal but the surveyor did so at a public inquiry ordered by the Ministers of Health and Transport. In the event both Ministers agreed to the dismissal, but in so doing gave their reasons for the decisions made.

The county medical officer of health must be a "fit person" but s. 103 of the 1933 Act states that a person shall not be appointed as county medical officer of health

unless he is a duly qualified medical practitioner and is registered in the Medical Register as the holder of a diploma in sanitary science, public health or state medicine. He is not to engage in private practice and is not to hold any other public appointment without consent of the Minister. The county medical officer must perform such duties as may be prescribed by regulations made by the Minister in addition to such other duties as may be assigned to him by the county council. Section 108 of the 1933 Act and the regulations prescribe similarly for medical officers of borough and district councils. The consent of the Minister of Health is required to the filling of vacant appointments unless the vacancies are to be filled in accordance with arrangements made under s. 58, Local Government Act, 1929, or s. 111, Local Government Act, 1933, to secure that medical officers of health shall not engage in private practice.

Compliance with the regulations entitles the district council to receive a grant from the county council of one-half of the medical officer's salary.

Sections 103 and 110 enact that medical officers of health of county councils and borough and urban district councils cannot be dismissed without the consent of the Minister of Health.

The Education Act, 1944, s. 88, requires local education authorities to appoint a "fit person" as chief education officer but before making the appointment they must consult the Minister of Education by sending to him particulars showing the name, previous experience and qualifications of the persons from whom they propose to make a selection. If the Minister considers that any one of the persons listed is not a fit person the Minister can give directions prohibiting his appointment.

There are no statutory provisions requiring approval of salary or dismissal.

Lastly, we may consider those officers linked with the Home Office. The method by which a chief constable is to be appointed is prescribed in reg. 6 of the Police Regulations, 1952, which reads, "Every appointment to the post of chief constable shall be subject to the approval of the Secretary of State and no person without previous police experience shall be appointed to any such post unless he possesses some exceptional qualification or experience which specially fits him for the post or there is no candidate from the police service who is considered sufficiently well qualified."

His salary is nominally determined by the Secretary of State through the Statutory Police Council: in practice it is the scale agreed by the Police Council for Great Britain or, failing agreement, by arbitration. If dismissed, the Police (Appeals) Acts, 1927 and 1943, give him a right of appeal to the Secretary of State.

A chief fire officer must be appointed in accordance with the procedure laid down in the Fire Service (Appointments and Promotion) Regulations, 1950, which, *inter alia*, require the approval of the Secretary of State to the appointment. The salary to be paid is approved by the Secretary of State who indicates by a Home Office circular that he gives the necessary approval to the application of specific salary scales recommended by the National Joint Council for Chief Officers of Local Authorities Fire Brigades. For the seven largest county fire authorities, individual approval by the Secretary

of State is required, as the salary of their chief fire officers is at the discretion of the authorities.

Section 41 of the Children Act, 1948, contains similar provisions to those of the Education Act, 1944, in relation to children's officers, the Secretary of State being empowered to prohibit the appointment of anyone he considers not a fit person.

Taking a county council as an example, therefore, the position may be summarized thus. The approval of the Secretary of State is required to the appointment of a chief constable or chief fire officer and the Minister of Transport may defray half the salary and travelling expenses of a county surveyor whose appointment he approves.

The Minister of Education and the Secretary of State may prohibit the appointment of a person not considered fit as chief education officer or children's officer respectively.

The person appointed as county medical officer must hold prescribed qualifications.

The appointments of clerk of the county council and county treasurer are at the pleasure of the county council, subject to the successful candidate being a "fit person."

The dismissal of the clerk of the county council, county medical officer of health or county surveyor is subject to the approval of the appropriate minister: a chief constable or chief fire officer has a right of appeal against his dismissal to the Secretary of State. No approval is required to the dismissal of a county treasurer or director of education.

The remuneration of the county clerk requires approval of the Minister of Housing and Local Government, and the surveyor's salary must be approved by the Minister of Transport if grant is to be paid on it. The salaries of the chief constable and chief fire officer are subject to Home Office approval although in the somewhat nominal manner previously described. No approval is required in the case of other officers.

There are certain obvious anomalies in these statutory provisions of the new Local Government Bill will provide an opportunity, if the government are willing and the local authority associations so desire, to secure amendments.

The reason for the Minister of Transport's entry upon the scene will disappear if, as is probable, the grant on surveyor's salaries is discontinued. The existing provisions concerning other officers were, we suggest, inserted in the relevant Acts and orders because Whitehall officials did not trust local

authorities to do the right thing. If Mr. Brooke and other Government spokesmen are serious in their expressions about the need for more freedom and independence for local authorities—and there is as yet no reason to doubt that such is the case—here is one way in which they can give practical value to those statements. We believe that full discretion should be left with the local authorities in the spirit of the Report of the Manpower Committee which recognized that they are responsible bodies competent to discharge their own functions in their own right and not ordinarily as agents of government departments.

We hold the same views with regard to remuneration. It must be remembered in this connexion that all officers, with the exception of clerks of county councils, are now within the fold of some negotiating body with rights of appeal where, in their opinion, a discretion is improperly exercised.

The question of security of tenure is not so clear cut. Some witnesses before the Hadow Committee* suggested that the present security of tenure should be extended to other officers holding important positions: others recommended that for all officers dismissal should require a stipulated majority vote. The Committee, while recognizing the importance of the principal officers being free to express their opinions on all matters without fear of the consequences were not satisfied that there was a case for extending security of tenure or requiring a two-thirds majority vote for dismissal. All that the Committee recommended was that before a principal officer was dismissed notice should be given to all members of the authority and, if the officer so requested, the grounds of the dismissal should be given in the notice.

We must confess that we see no good reason for some of the differences about dismissal which now exist. Consider, for example, the position of the clerk of a county council compared with clerks of borough or district councils. And if it is necessary to protect the position of a chief fire officer it is hard to understand why a treasurer or director of education should have no safeguard. We feel on balance that there should be a right of appeal for all principal officers because the existence of such a right would help rather than hinder good local government. The appeal might be to the panel of the appropriate negotiating body if so desired, instead of to a minister.

* Committee on the Qualifications, Recruitment, Training and Promotion of Local Government Officers, 1934.

A COUNTY COUNCIL, WHAT IS IT? A "CONSTITUTIONAL OLIGARCHY"?

By H. F. SCOTT STOKES

Thirty years as a member of a typical west-country non-county borough, and a very much shorter period as a member of one county council, naturally suggests comparisons—not always very flattering to the larger body, for old men "like what they know," and find it difficult to learn what they don't; and, indeed, the performance of the members as a whole, not only of the "unassuming freshman," is not impressive.

The sums are so large, the problems are so big and so technical, and the rules are so many; and ever at your elbow is the shadow of "The Ministry," the senior partner in nearly all our enterprises, and therefore he who must be obeyed.

It is, perhaps, for this reason that so many lose heart and give up after, say, six years—or, even worse, lose heart but don't give up. Out of our 75 members (apart from the 25 aldermen, whom I mention only to praise), only one was on the council 20 years ago. It is indeed a striking "labour turnover," and must represent an appalling waste of highly skilled official time, spent in failing to educate men who failed to become their "masters."

Town councils are manned mainly by small men, no doubt, but men dealing with small matters of a practical character within a mile or two of where they live, which they well

understand, and can, and do effectively give "instructions" about. And what they say goes. It is but an outsize parish pump, if you like. But it works. And if the electors don't like the way it works, "some of them be coming out"; and, sooner or later, most of us do. It is a genuine democracy in the modern usage of that word (even though the *J.P. and L.G.R.* has disapproved that usage), and there are so many of us (and of the allied and associated U.D.C.'s and R.D.C.'s) that "the Ministry" simply can't keep tabs on us all, all the time, and doesn't try to—though it tries more often than it did before the War, which is not beneficial. And, after all (I do not intend to be tendentious), apart from housing, our only grant is a block grant, and the sum total of all our exchequer income is less than one-third of the whole, and a dwindling percentage of it, at that; and a good job too.

Now the nobility and gentry, farmers and traders, senior Services-men and "Opposition," who make up the county council, have, of course, more "class." The whole affair has style, which is a Good Thing. "We all haven't got brains" (as a dear girl said to me the other day), but we are not small-minded. But we don't do anything. We can't. We are out of our depth, all the time. And while endless committees enter with damnable iteration into endless "estimates" and other kinds of "unprofitable conversation," the county council itself, and no mere committee (much less any sub-committee) is "the only policy-making body." And as the county council sits in public, and is seldom, if ever, moved to make a policy pronouncement, our quite admirable officials, having bowed the knee in the house of Rimmon and performed whatever other rites are requisite, do do all. And do it very well.

Or, as they would put it, with their unfailing courtesy, we act on their advice. Very well, and we can do no other—just as the Queen (God bless her) can only act on the advice of her Ministers. That is what we understand by a constitutional monarchy; and we are perhaps a "constitutional oligarchy"?

It is an uplifting thought, indeed most reassuring. Reassuring, and really rather grand. But, wait a minute. A constitutional monarch is one who acts only on the advice of elected Ministers, whose "writ" runs so long, and only so long, as they command the confidence of the electorate.

But who ever elected, or would elect, or can ever reject the gentlemen who advise us? The thing is nonsense. We, the elected of the people (how often how perfunctorily, alas) are to answer to the electors for the acts of all our "servants," to whom, on most matters, we give orders at our peril; and they may be bound to disobey us if we do.

Nothing in the world is simple; certainly not squaring the "eternal verities" of XVIIIth century political thought with the down-to-earth activities of a county council today.

Behind our XVIIIth century façade, and in spite of the XVIIIth century flavour of our formal sittings, a county council is, in fact, big business; conducted without capital and without reserves, and without the guiding star or yardstick of profit and loss, on an ever increasing scale (as one Act or another directs), and with admirable zeal and integrity.

But not by us. We are just the "Sales Department." No one but a fool now despises salesmen. But we don't ask them to run the Works. That's a job for men who are masters of their craft, having spent their life in it.

WEEKLY NOTES OF CASES

COURT OF APPEAL

(Before Jenkins, Parker and Pearce, L.JJ.)

MONMOUTHSHIRE COUNTY COUNCIL v. BRITISH TRANSPORT COMMISSION

October 17, 1957

Highway—Repair—Bridge carrying road over railway—Diversion roads along embankment linking old road to bridge—Embankment slipping into railway cutting—"Immediate approaches" of the bridge—Liability to repair—Railways Clauses Consolidation Act, 1845 (8 and 9 Vict., c. 20), s. 46.

APPEAL from an order of LORD GODDARD, C.J.

By a private Act of 1847, which incorporated the Railways Clauses Consolidation Act, 1845, a railway company was authorized to construct an extension to their railway. The extension crossed a turnpike road, which has since become a county highway. The company built a bridge to carry the road over the railway, and so comply with s. 46 of the Railways Clauses Consolidation Act, 1845, which provides that "if the line of the railway cross any turnpike road or public highway, then . . . such road shall be carried over the highway . . . by means of a bridge . . . and such bridge, with the immediate approaches, and all other necessary works connected therewith, shall be executed and at all times thereafter maintained at the expense of the company . . ." The railway constructed two stretches of diversion road, one on each end of the bridge, one approximately 143 yds. and the other approximately 367 yds. long, to connect the bridge with the road. These diversion stretches ran along the embankment of the railway cutting. Part of the embankment at the end furthest from the bridge of the longer of these diversion stretches began to give way, and thus endanger the road. The highway authority (the Monmouthshire county council) sued for a declaration that the British Transport Commission, as successor to the liabilities and obligations of the railway company, was liable to repair the diversion roads and the embankment along which they ran, and for an order directing the commission to carry out the necessary repairs.

Held: the railway company (and, therefore, the commission) were not liable to repair that part of the embankment and road which were in disrepair, because (i) they were too distant from the bridge to be its "immediate approaches"; (ii) the required repairs were not "necessary works connected" with the bridge or its immediate approaches, because they were necessary for the railway company's embankment, and not for the bridge.

Per PARKER, L.J.: "Necessary works connected therewith" are really matters such as buttresses and revetments and the like, which are directly, and not indirectly, connected with the structure of the bridge.

Counsel: Harold Williams, Q.C., and Marnham, for the highway authority; Goss, Q.C., and Francis, for the British Transport Commission.

Solicitors: Overton & Blackburn, for Vernon Lawrence, Newport, Mon.; M. H. B. Gilmour.

(Reported by Henry Summerfield, Esq., Barrister-at-Law.)

COURT OF CRIMINAL APPEAL

(Before Lord Goddard, C.J., Donovan and Havers, JJ.)

R. v. HEAD

July 23, October 21, November 1, 1957

Criminal Law—Sexual offence—Carnal knowledge of mental defective woman on licence from institution—Order of detention illegal—No foundation for prosecution—Mental Deficiency Act, 1913 (3 and 4 Geo. 5, c. 28), s. 9—Sexual Offences Act, 1956 (4 and 5 Eliz. 2, c. 69), s. 8 (1).

APPEAL against conviction.

The appellant was convicted at Cumberland Assizes before Hinchcliffe, J., of carnal knowledge of a woman on licence from an institution for mental defectives and was sentenced to four months' imprisonment. In April, 1945, when 16 years of age, the woman was committed by justices to an approved school under s. 72 (3) of the Children Act, 1933. The record of information prepared under the Act stated that her conduct at school gave no trouble, that her school character was good, that she was

somewhat forward and that her ability was average, but that her character in employment was unsettled and not satisfactory. Her mental ability was described as apparently normal. On July 2, 1947, an order was made by the Secretary of State under s. 9 of the Mental Deficiency Act, 1913, transferring her from the approved school to an institution for defectives. The order was based on two medical certificates dated June 10, 1947, certifying her as a "moral defective" within the meaning of s. 1 of the Act, but neither contained any evidence that she satisfied the requirements of that section. It was conceded on behalf of the Crown that the order of detention was invalid.

Held: that s. 56 (1) (a) of the Act of 1913 and s. 8 of the Sexual Offences Act, 1956, had no application to the case of a woman who had not been found to be a mental defective under the Act and still less to one who was unlawfully detained in an institution, though she was being subjected to care and treatment, and, if she was being unlawfully detained, she needed no licence to go out. The conviction must, therefore, be quashed.

Per curiam: On a prosecution for the above-mentioned offence, the prosecution must prove by the production of the relevant documents that the woman in respect of whom the charge is made was at the time of the offence lawfully subject to the Act.

Counsel: *G. W. Guthrie Jones*, for the appellant; *Sir Reginald Manningham-Buller, Q.C. (Attorney-General)*, and *A. S. Booth*, for the Crown; *Rodger Winn*, for the Minister of Health and Board of Control.

Solicitors: *Registrar, Court of Criminal Appeal; Director of Public Prosecutions; Solicitor, Ministry of Health.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Donovan and Ashworth, JJ.)
UNITED GRAND LODGE OF ANCIENT FREE AND
ACCEPTED MASONS OF ENGLAND v. HOLBORN
BOROUGH COUNCIL.

October 8, 9, 16, 1957

Rating—Relief—Organization whose main objects are concerned with advancement of religion—Freemasons' Hall—Rating and Valuation (Miscellaneous Provisions) Act, 1955 (4 and 5 Eliz. 2, c. 9), s. 8 (1) (a).

CASE STATED by the appeal committee of London quarter sessions.

The applicants, the United Grand Lodge of Ancient Free and Accepted Masons of England, applied to the county of London quarter sessions for relief from rating under s. 8 (1) (a) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, in respect of a hereditament occupied by them, namely, the Freemasons' Hall, Great Queen Street, London, on the ground that they were an organization "not established or conducted for profit and whose main objects are . . . concerned with the advancement of religion . . ." within the meaning of the section.

Quarter sessions found that the hall comprised a grand temple for the meetings of Grand Lodge, 17 lodge rooms which were let for the meetings of masonic lodges, a museum, a library and administrative offices. The Grand Lodge was not established or conducted for profit. It was unincorporated and its purpose was to promote freemasonry. Its two main functions, it was found, were (i) to administer the fund of benevolence, and (ii) to administer and centrally govern masonic activities. The main objects of freemasonry were to carry out the objects set out in the "antient charges" and in an extract from a solemn admonition which formed part of the ritual of the ceremony of initiation, and were directed to promoting principles of social conduct founded on a moral or ethical basis. Freemasonry was not in itself a religion, but it had a religious foundation and basis. There was no requirement in masonry that a candidate should have any particular religious belief, but he was required to declare his belief in a Supreme Being. The principles were brotherly love, relief, and truth, which formed the subject of the solemn admonition. All ceremonies opened and closed with prayer and constant references were made to the "volume of the Sacred Law" (in English Lodges the Bible) which must be open throughout the ceremonies. Freemasonry was an organization devoted to advancing the acceptance and practice of basic religious principles which might be particularized as man's relation to God, to his neighbour, and to himself. Its objects and practices were religious in that they were directed to furthering a religious attitude to God and to one's fellow man.

There were four main masonic benevolent institutions—the Royal Masonic Institution for Girls (a girls' school), the Royal Masonic Institution for Boys (a boys' school), the Royal Masonic Benevolent Institution (for the welfare of the aged poor), and the Royal Masonic Hospital, the benefits of which were available only to masons or their dependents. Those institutions were

supported almost entirely by voluntary contributions, the bulk of which came direct from lodges and individual masons.

Quarter sessions decided that Grand Lodge was mainly concerned with the co-ordination and administration of freemasonry in England, and that the section did not apply to a hereditament occupied for that purpose. They, accordingly, held that the applicants were not entitled to relief. The applicants appealed.

Held: that quarter sessions were wrong in their approach to the issue before them, in that they had confused the purpose of the applicants with the manner in which they sought to effect it. All that they had to decide was whether a main object of the appellants was the advancement of religion. When the work done by organizations which admittedly did set out to advance religion was considered, the contrast with that of the applicants was striking. Masonry said to a man: "Whatever your religion or mode of worship, believe in a Supreme Creator and lead a good moral life." There was no religious instruction, no programme for the persuasion of unbelievers, no religious supervision to see that its members remained active and constant in the various religions they might profess, no holding of religious services, and no pastoral or missionary work of any kind. The main object of the applicants could not, therefore, be held to be the advancement of religion. Quarter sessions had come to the right decision, though for wrong reasons, and the appeal must be dismissed.

Counsel: *Milner Holland, Q.C., Roots and David Trustram Eve*, for the appellants; *Patrick Browne*, for the rating authority.

Solicitors: *Blundell, Baker & Co.; G. T. Lloyd.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

INDEPENDENT ORDER OF ODDFELLOWS MANCHESTER UNITY FRIENDLY SOCIETY v. MANCHESTER CORPORATION

October 9, 16, 1957

Rating—Relief—Organization whose main objects are concerned with advancement of social welfare—Friendly society—Rating and Valuation (Miscellaneous Provisions) Act, 1955 (4 and 5 Eliz. 2, c. 9), s. 8 (1) (a).

CASE STATED by recorder of Manchester.

The applicants, the Independent Order of Oddfellows Manchester Unity Friendly Society, applied to Manchester quarter sessions for relief from rating under s. 8 (1) (a) of the Rating and Valuation (Miscellaneous Provisions) Act, 1955, in respect of a hereditament occupied by them on the ground that they were an organization "not established or conducted for profit and whose main objects are . . . concerned with the advancement of . . . social welfare" within the meaning of the section.

The income and the capital funds of the society included not only contributions of the members and interest from investments, but also moneys received by way of fines, donations, and levies. The objects and activities of the society included the provision of benefits to members and their wives, children, and other relations. The benefits were discretionary in character. A member who would otherwise be entitled to payment of benefit under the rules of the society could suffer a suspension of benefit or be fined or be expelled from membership by a resolution of the lodge if he or she had been imprisoned for any crime or guilty of serious personal misconduct or made known the secrets of the society.

The learned recorder held that the society was an organization not established or conducted for profit, and that the main objects of the society were concerned with the advancement of "social welfare" within the meaning of s. 8 (1) (a), and, accordingly, allowed the application. The rating authority appealed to the Divisional Court.

Held: that no valid distinction could be drawn between the present case and *National Deposit Friendly Society (Trustees) v. Skegness U.D.C.* (1957) 121 J.P. 157. Such differences as existed were insufficient to afford a distinction between the main objects of the respective societies, and the deciding factor in each case must be what the main objects of the society were. Though in the present case the class of person eligible for benefit was wider than in the earlier case and included non-members, that was insufficient to convert the main object of the society from being the carrying into effect of a business arrangement in the form of mutual insurance into being the advancement of social welfare. The appeal must, therefore, be allowed.

Counsel: *Rowe, Q.C., and Hinchliffe*, for the rating authority; *Sir Andrew Clark, Q.C., and Glidewell*, for the society.

Solicitors: *Sharpe, Pritchard & Co., for P. B. Dingle, Manchester; Forsythe, Kerman & Phillips, for John Gorna & Co., Manchester.*

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MAGISTERIAL LAW IN PRACTICE

The Birmingham Post. September 17, 1957.

MAN CHARGED WITH SETTING FIRE TO HOUSE

A fire in one of a number of back-to-back houses in Hockley might have had "appalling consequences" if it had not been discovered promptly, Mr. R. M. Dunstan, prosecuting, said at Birmingham magistrates' court yesterday.

Before the court was Abdul Aziz (42) a Pakistani, of Park Road, Hockley, who was accused of setting fire to the house with intent to injure or defraud.

Hannah Kett, who said that she was living with Aziz, was called as a witness by the prosecution. She said Aziz had told her he was carrying oil upstairs when he fell. A lighted match fell on the spilt oil and set fire to the house.

The statement she made to the police, in which she said Aziz told her that he set fire to the house deliberately was untrue she added.

Sent for trial

The court granted the prosecution's application to treat this witness as hostile.

Aziz was committed for trial at Birmingham Assizes and was allowed bail. Mr. T. S. Baker (defending) said that Aziz pleaded not guilty and reserved his defence.

Mr. Dunstan said that in January last year Aziz insured the house for £500, and later took out another insurance on the contents for £200.

Early on August 25, a man living in a house which backed on to Aziz's home, awoke to find his bedroom full of smoke. He went outside, and saw smoke pouring from the attic window of Aziz's house.

Smell of petrol

The fire brigade was called, and Sub-Officer Hatfield noticed a strong smell of petrol. On the lower floor of the house furniture had been stacked up and on the staircase, which was burning, there was a bundle of clothing. In the attic a fire had been built in one corner, with a pillow, waste paper, clothing and timber.

When Aziz returned to the house two days later, he was questioned about the fire. He replied: "It was wrong of me. I did it. The corporation only let me have £25 for the house, and I am a fool and think of the insurance money."

Mr. Dunstan said Aziz must have imagined the figure of £25. Although the corporation had applied for a clearance order in respect of the house, it had not yet been confirmed, and no compensation was agreed.

HOSTILE WITNESS

When a witness proves adverse and gives evidence opposite to that expected from him the court may, if it is satisfied that the witness is hostile, allow the party calling him to dispute his veracity and to cross-examine him.

Section 3 of the Criminal Procedure Act, 1865, provides that "a party producing a witness shall not be allowed to impeach his credit by general evidence of bad character; but he may, in case the witness shall, in the opinion of the Judge, prove adverse, contradict him by other evidence, or, by leave of the Judge, prove that he has made at other times a statement inconsistent with his present testimony; but before such last-mentioned proof can be given, the circumstances of the proposed statement, sufficient to designate the particular occasion, must be mentioned to the witness, and he must be asked whether or not he had made such a statement."

Before a witness can be cross-examined by the party calling him he must be shown to be adverse in the sense of showing a hostile mind, and not merely in the sense of giving evidence which is unfavourable to the party calling him (*Greenough v. Eccles* (1859) 5 C.B. (N.S.) 786).

The question as to whether a witness is so hostile as to justify his cross-examination by the party calling him is one in the absolute discretion of the Judge (*Price v. Manning* (1889) 42 Ch. D. 372).

Where a witness for the prosecution proves "adverse" and is shown to have "made at other times a statement inconsistent with his present testimony," such statement is not evidence against the accused of the allegations which it contains, but is relevant only as to the credibility of the witness (*R. v. White* [1922] 17 Cr. App. R. 60).

DEBTORS ACT, 1869, SECTION 13 (1)

Passenger Obtaining Credit by Fraud on Leicester Corporation Buses

We are indebted to Mr. G. C. Ogden, M.A., town clerk of Leicester, for bringing the following case to our notice.

At Leicester city magistrates' court on September 24, 1957, Donald Newbrooks of 22 New Romney Crescent, Netherhall Estate, Leicestershire, was found guilty on four charges of obtaining credit by false pretences or fraud other than false pretences contrary to s. 13 (1) of the Debtors Act, 1869, whilst riding as a passenger on Leicester corporation buses. He was sentenced to one month's imprisonment on each charge, the second and fourth sentences to run concurrently with the first and third respectively.

The facts of the case were that between October 3, 1956, and September 13, 1957, the defendant on at least 20 occasions obtained credit on Leicester corporation buses by asking for the issue to him of an unpaid fare slip. These slips are issued to passengers who find themselves on corporation buses without the means to pay their fares. They allow the passenger to complete his journey on the understanding that he will pay for it later. The slips show the amount of credit obtained, the method by which payment should be made and the possibility of legal proceedings being taken if payment is not made. An ordinary ticket for the journey taken is issued with a slip.

The defendant in this case made no attempt to pay for any of the journeys he had taken by obtaining the slips and persisted in making these journeys after a written demand for payment of certain of the fares had been made and even after he had been interviewed by a detective-sergeant of the city police force and had had the first three summonses served on him.

Four informations were laid, each dealing with one of the journeys taken by the defendant. At the hearing, the prosecution proved system on the part of the defendant by calling evidence of 20 unpaid-for journeys taken by him by means of

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unpaid fare slips. The defendant denied having a fraudulent intent and said that he had intended to pay the outstanding fares. He admitted, however, that certain of the fares had been outstanding for nearly a year.

The magistrates in imposing sentence of imprisonment for the offences may have been influenced by the defendant's past record.

In *R. v. Jones* [1898] 1 Q.B. 119; 62 J.P. 33, the defendant ordered a meal in a restaurant; he made no verbal representation at the time as to his ability to pay, nor was any question asked him with regard to it. After the meal he said he was unable to pay, and that he had (as was the fact) only one half-penny in his possession.

It was held that he could not be convicted of the offence of obtaining goods by false pretences, but that he was liable to be convicted of obtaining credit by means of fraud within the meaning of s. 13 (1) of the Debtors Act, 1869.

In the course of the judgment Lord Russell of Killowen, C.J., said: "The second count is framed . . . upon s. 13 of the Debtors Act, 1869, which provides that in certain cases a person shall be deemed guilty of a misdemeanour, the first case being if in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud. There are three elements which have to be considered in the construction of that section: first, there must be the incurring of a debt or liability; secondly, there must be an obtaining of credit; and thirdly, there must be fraud: the conjunction of these three ingredients makes the offence. No one can doubt that the defendant did incur a debt or liability; he ordered goods under circumstances which implied a promise to pay for them. Then did he obtain credit? We are of the opinion that he did. The prosecutor might have said that he would not furnish him with the goods until he paid the price, or he might have insisted on payment in actual exchange for each article as it was supplied, but he did neither; he furnished the goods under circumstances which passed the possession and property in them, relying on the readiness and ability of the defendant to pay. It does not seem to matter that the period of credit was a short period; he trusted the defendant, and parted with his goods without insisting on prepayment or upon interchangeable payment. We think, therefore, that credit was obtained. Thirdly, was there fraud? There was a debt, and there was credit, and we think there was ample evidence to

justify the jury in arriving at the conclusion that the defendant was guilty of fraud. He goes to an eating-house, where the ordinary custom is to pay directly after the goods have been consumed; he knows that such goods are supplied, not on personal knowledge, but on the understanding that the usual custom will be observed. The jury found that he had no intention of paying; he intended to cheat, and so the jury found. We think, therefore, that the conviction was right upon the second count, and that it must be affirmed."

The three elements are present in this case from Leicester.

(1) The passenger incurred a debt or liability. "No one can doubt that the defendant did incur a debt or liability." He rode on a bus "under circumstances which implied a promise to pay" the fare.

(2) He obtained credit. The conductor allowed him to travel "relying on his readiness and ability to pay" later.

(3) There was fraud. "The (justices) found that he had no intention of paying; he intended to cheat and so the (justices) found."

Evidence of other unpaid-for journeys was rightly admitted to show the fraudulent intention of the defendant. In *Stephen's Digest of the Law of Evidence* (12th edn.) arts. 12 and 13 the principle is stated as follows: When there is a question whether a person said or did something, the fact that he said or did something of the same sort on a different occasion may be proved if it shows the existence on the occasion in question of any intention, knowledge, good or bad faith, malice, or other state of mind or of any state of body or bodily feeling, the existence of which is in issue, or is deemed to be relevant to the issue; or if, on the trial of a criminal charge against such person, it tends to rebut a defence otherwise open to him; but such acts or words may not be proved merely in order to show that the person so acting or speaking was likely on the occasion in question to act in a similar manner (art. 12).

When there is a question whether an act was accidental or intentional, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is deemed to be relevant (art. 13).

See *Makin v. Att.-Gen. for New South Wales* [1894] A.C. 57; 58 J.P. 148; *R. v. Bond* [1906] 2 K.B. 389; 70 J.P. 424; *R. v. Ball* [1911] A.C. 47; 75 J.P. 180; *R. v. Lovegrove* [1920] 3 K.B. 643; 85 J.P. 75.

REVIEWS

Family Law. By P. M. Bromley, M.A. (Oxon), Barrister-at-Law. London: Butterworth & Co. (Publishers) Ltd., 88 Kingsway, W.C.2. Price 55s. net, postage 1s. 6d. extra.

Mr. Bromley is lecturer in law in the University of Manchester. We can well believe that his students find his lectures as enjoyable as they are instructive. He has the gifts of clear exposition in simple terms and of making interesting what is often approached by students as a subject likely to prove dry and difficult. Thus he often begins with a little of the history of some legal doctrine, showing how it was developed under changing conditions, and proceeds to state the present position in the light of statute and case law.

As he states in his introduction, the author realized the magnitude of the subject and had to set himself certain limits, but he has included all the most important aspects of family law and arranged the matter in logical sequence. The three main divisions of the book are under the headings "Husband and Wife," "Parent and Child," and "The Family and Property." Each division is sub-divided and there are adequate cross-references between the different parts of the book. Divorce and separation naturally demand a considerable amount of treatment in such a book. That part which deals with proceedings before magistrates forms an excellent introduction to the subject, although it could not be expected that it would include details about procedure. There is practical advice, for instance, about maintenance clauses in these orders, and the brief history of the growth of the jurisdiction of magistrates is an interesting introduction to the subject. The distinction between void and voidable marriages and its effect upon questions about the discharge of orders is discussed, and the decision in *Pratt v. Pratt* (1927) 96 L.J. p. 123, the accuracy of which has been doubted, is described as difficult to defend and inconsistent with similar cases in different fields. This is a good example of Mr. Bromley's method. When the law is clearly laid down he states it with precision, when it is uncertain, or when a decision is of doubtful validity,

he is never afraid to make a definite submission, and one feels that his submissions are almost sure to be right.

Many difficulties arise about domicile and nationality as affected by marriage. There is much useful guidance on these subjects. Another matter which puzzles students of family law is to what extent a parent is liable for the acts of his child, in relation to both civil and criminal acts. This is clearly expounded with illustrations. The right of a parent to the custody of his infant child is also a matter upon which it is difficult to pronounce in certain circumstances. There is old authority for saying that it ceases upon the marriage of a daughter and the author submits convincingly that the same must apply to a son.

The book is intended primarily for law students but the author hopes it may prove of use to practitioners also. We have no doubt about this and we cordially recommend it as a truly valuable addition to the literature on this subject. As the author says, family law is still developing more rapidly than almost any other branch of the law. The need for good text books is therefore imperative.

Taylor's Principles and Practice of Medical Jurisprudence. Eleventh Edition. Volume II. By Sir Sidney Smith, C.B.E., LL.D., F.R.C.P., F.R.S. J. & A. Churchill, Ltd., 104 Gloucester Place, W.1. Price 80s.

We reviewed volume I at p. 267 last year, and we need not repeat what we said there about the value of this standard work to the members of both the legal and the medical profession. The editor has had the assistance of several distinguished collaborators in certain specialized subjects.

In his preface, the learned editor expresses the opinion that in the past half century progress in science has been greater than in the whole previous history of mankind. This may be true, and perhaps the courts have failed in some respects to keep pace with science.

Whereas, for example, in some countries blood tests are the rule in cases of disputed paternity, little use is made of them in England. "The English courts," says the editor, "are slow to admit scientific matters with which to contest issues previously decided—if less equitably—on circumstantial evidence by interested parties. An almost negligible interest in the matter among lawyers contesting such cases has resulted in a paucity of serological experts engaged in such work in this country." There is certainly a great deal of information in this volume which supports a plea for greater use of this type of evidence which, carefully obtained by expert serologists, can be conclusive in excluding the possibility of paternity.

Volume II is devoted to sexual medical jurisprudence in its various aspects, and to toxicology. On the question of poisons, unscientific people have no clear idea about what constitutes a poison. This is natural enough, for *Taylor* admits there is no short definition. What is very much to the point is that we find here a great deal of information about poisons and poisoning, which is of more use than a rigid definition that for practical purposes might be of little value.

It is difficult to keep a work such as this completely up to date, and it is only too easy to overlook some point that needs revision. It is, however, unfortunate that on pp. 55 and 61 there should be a statement that husband and wife may not give evidence of non-access with a view to bastardize a child born to the wife during the marriage with a reference to the case of *Russell v. Russell* [1924] A.C. 687. The exact opposite is now contained in s. 32 of the Matrimonial Causes Act, 1950.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

MURDER AND CAPITAL PUNISHMENT

The Secretary of State for the Home Department was asked in the Commons whether, in view of the increased number of murders, he would reintroduce the death penalty for all murders.

The Secretary of State for the Home Department, Mr. R. A. Butler, said that the number of murders recorded as known to the police for each of the six months April to September, 1957, were, respectively, 27, 21, 34, 15, 20 and 11, a total of 128, compared with a total of 82 for the corresponding period in 1955. It was too soon to assess the effect of the Homicide Act or to contemplate a further change in the law.

Sir Thomas Moore (Ayr) asked whether that increase did not show clearly that the death penalty was a deterrent. How many more murders had to be committed before the Government realized that in that particular case they had made a grave mistake?

Mr. Butler replied that Parliament had passed the Homicide Act, and he thought it was far too soon to contemplate a change in the law. The position about the numbers of murders was that they fluctuated. He was not underestimating the gravity of the figures, but they had to see whether that was a fluctuation before they envisaged a change in the law.

In reply to further questions, Mr. Butler said that the number of children murdered between the date of the Homicide Act coming into force and September 30, was 32, compared with 34 in the same period of 1955, so it would be seen that it was difficult to gather the exact significance of those things from mere figures.

ASSAULTS ON WOMEN AND CHILDREN

In reply to another question from Mr. G. W. Lagden, the Secretary of State circulated details of indecent assaults on females and defilement of girls under 16 in 1955 and 1956, as follows:

Offence	Number of crimes known to the police		
	1955	1956	Per cent. variation 1955-56
Indecent assaults on females.	7,619	8,141	+ 6.9
Defilement of girls under 13.	195	172	- 11.8
Defilement of girls 13-16.	1,491	1,578	+ 5.8
Total	9,305	9,891	+ 6.3

ROBBERY WITH VIOLENCE

Sir J. Lucas (Portsmouth, S.) asked the Secretary of State if he would give the comparative figures for robbery with violence in the 12 months immediately previous to the abolition of flogging for that offence, and also the comparative figures for the last available 12 monthly period.

Mr. Butler stated that corporal punishment was abolished as a judicial penalty in September, 1948. In 1947 the number of offences of robbery with violence known to the police was 842; in 1956 the number was 730.

SPRING CLIP KNIVES

Sir F. Graham (Darlington) asked the Secretary of State, in view of the fact that the performance of no legitimate trade or employment would in any way be hindered by the total prohibition of the use of spring clip knives, whether he would introduce legislation with a view to such prohibition.

Mr. Butler replied that for various reasons he did not consider that such legislation was practicable or necessary.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Wednesday, November 13

MATRIMONIAL PROCEEDINGS (MAGISTRATES' COURTS) BILL—read 1a.

PESTS ACT, 1954 (AMENDMENT) BILL—read 1a.

HOUSE OF COMMONS

Wednesday, November 13

NATIONAL INSURANCE BILL—read 2a.

EXPIRING LAWS CONTINUANCE BILL—read 2a.

Thursday, November 14

SLAUGHTERHOUSES BILL—read 2a.

Friday, November 15

TRUSTEE SAVINGS BANK BILL—read 2a.

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WOMEN IN THE HOUSE

The thorny subject of House of Lords reform, which has recently been debated in both Houses of Parliament, provides an irritant to allergies among members of all parties. No other projected reform in constitutional law sets up such an epidemic of rashes; in no other part of the body politic do the victims feel impelled to scratch the sore places until they are nearly raw. Everybody has his special panacea: some would give greater power to the Second Chamber, others would (in Hamlet's words) "reform it altogether"—out of existence. There are those who pin their faith to the hereditary principle, others who scoff thereat as an anachronistic anomaly, and yet others who would retain that principle as one ingredient in a heterogeneous mixture of pedigree peers, nominated nobles and lords for life. And then, in the midst of the struggle, sex rears its ugly head: a reformed House (some assert) must necessarily admit women as well as men; how then (ask others) can peeresses in their own right be excluded? And, finally, there are those to whom women in politics are anathema, for whom the Sex Disqualification (Removal) Act, 1919, was a retrograde step, and who regard the Upper House as the last ditch which they must hold at all costs against the feminine invasion that has overflowed the battlements of male prerogative elsewhere.

The thoughtful observer, who looks down from his ivory tower upon the struggle in which he cannot or will not participate, will be struck chiefly by two things—the emotional content of many pronouncements of the protagonists on both sides of the controversy, and the extreme illogicality of attempting to apply the rules of logic to an institution like the House of Lords—an institution at once so deeply rooted in tradition and so luxuriant in its growth; here choked with dead wood, there putting forth new shoots in which the sap runs fresh and strong. We have not studied the statistics, but we venture to assert that, among the active members of that august assembly, those of ancient lineage are a minute minority; and that the new blood infused by the creation of (say) the past 50 years, though not of the truest shade of blue, is as rich and healthy as the fluid that runs in the veins of those who can trace their descent three, four or five centuries back. And if the peerage, as at present constituted, is no longer exclusively an aristocracy of birth, it is none the worse on that account.

Convention, however, dies hard. In the present controversy, the strangest element of all is the sex prejudice evinced by some of those who might be expected to uphold the ancient, chivalrous traditions of *noblesse oblige*. What, for example, has happened to the ideal of the *preux chevalier, sans peur et sans reproche*, who wore his lady's favour in his cap and set out to succour beauty in distress? How can these traditions be reconciled with the ungallant observation of a noble lord, in the recent debate, to the effect that he and his colleagues "did not want to meet women in the library of the House"? The noble lady who sits (in the Commons) for Aberdeen South, moving the address in reply to the gracious Speech referred to this as a "purely intellectual argument" of some who, "in another place maintained that women were unsuited to politics." It may be doubted whether there is anything intellectual about it.

The argument is nearly two thousand four hundred years old. Aristophanes, the Bernard Shaw of ancient Athens, made it the theme of two of his best-known comedies. The

Lysistrata (produced in 413 B.C.) sets out to prove that war is far too serious a business to be entrusted to the men of any civilized state, and shows how the women of the community, under competent organization, bring to an end a long-drawn-out and unpopular struggle by refusing their husbands all marital rights as long as hostilities continue. The resistance movement spreads to the enemy states, and in no time at all a summit conference is called and peace negotiations successfully consummated. (The interesting question arises whether such a movement today would fall within s. 1 (1) of the Trade Disputes Act, 1927, as "sympathetic strike action . . . designed or calculated to coerce the Government . . . by inflicting hardship on the community.")

Twenty years later, in the *Ecclesiazusae* or *Women in Parliament*, Aristophanes went even further. Praxagora, the heroine of the play, persuades the women of Athens to seize control of Parliament, and shows up the abuses of an all-male House and Government by the method of *reductio ad absurdum*. For the Parliament of Women passes a number of extraordinary Acts instituting community of goods and money, abolishing marriage and communising intercourse between the sexes—all this on the principle that it can hardly be worse that the wild extravagance of masculine legislation and administration. And Praxagora, in her inaugural address to the Assembly, uses an argument which has been more than once repeated since:

"I move that now our womankind be asked
To rule the State. In our own homes, you know,
They are the managers, and rule the house."

Seventy-three years ago, Gilbert's *Princess Ida* put forward the same argument:

"In mathematics Woman leads the way:
The narrow-minded pedant still believes
That two and two make four! Why, we can prove,
We women—household drudges as we are—
That two and two make five, or three, or seven,
Or five-and-twenty, if the case demands."

A similar point has been made by a learned High Court Judge, in a recent case dealing with the award of damages to a working man's widow. The housewife, said his Lordship in effect, is far better qualified, by experience, to judge how the sum should be invested or disposed of, than is the Court or any Government department. It is instructive to observe how great minds, separated in time by a distance of 24 centuries, agree.

A.L.P.

NOTICES

The County of London Quarter Sessions will be transferred back to the Sessions House, Newington Causeway, S.E.1, during the latter part of December, next. The court will sit at their present address, Sessions House, 181 Marylebone Road, N.W.1, for the December 17 sessions for three days (December 17-19) and then not again until January 7, 1958, when they will sit at Newington Causeway.

The next quarterly meeting of the Lawyers Christian Fellowship will be held at The Law Society's Hall, Bell Yard, W.C.2, on Tuesday, November 26, 1957, at 6.30 p.m. Tea will be available from 5.30 p.m. The meeting, to which all lawyers, law students and visitors are warmly welcomed, will be addressed by the Revd. David Sheppard on "The Problem of Youth Adrift."

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Children and Young Persons—Probation order made by juvenile court—Further offence after 17.

I am interested in P.P. 1 at 121 J.P.N. 457, on the subject of Probation.

I should be pleased to learn if the answer given would be affected by a charge of housebreaking or other similar offence which could not normally be dealt with by a magistrates' court.

RONMOR AGAIN.

Answer.

Even if the charge is one which cannot be dealt with by a magistrates' court, the court before which the offender should be brought for the matter to be considered is one of those mentioned in the previous answer.

In the absence of authority to the contrary, however, we are of the opinion that neither court can deal with the original offence in such circumstances. See an article at 118 J.P.N. 573 and P.P.s 119 J.P.N. 758 and 121 J.P.N. 475.

2.—Criminal Law—Time limit for starting proceedings under Forestry Act, 1951, s. 12 (3).

Owing to a misunderstanding, X, a timber merchant, started to fell growing trees on an area of land belonging to Y in September, 1956. X was under the firm belief that the trees were on the land of Z where he had permission to fell. Y did not discover the felling of the timber until the early part of November, and at once threatened an action.

X, however, agreed to pay for the trees that were felled and said he would purchase the remaining trees.

Y was led to believe that X had a licence to fell, and it was not until April 1, 1957, that a licence was granted under s. 2 of the Forestry Act, 1951, to fell the remainder of the trees. No felling of trees on Y's land took place between February 15 and the grant of the licence on April 1.

Y is now summoned, on an information laid on August 22, 1957, for aiding, abetting and procuring X to fell the trees between September 1, 1956, and April 1, 1957.

Having regard to the fact that no trees were felled after February 15, can proceedings be instituted under s. 12 (3) of the Forestry Act, 1951?

HOTTO.

Answer.

The section allows proceedings to be instituted within six months of the first discovery of the offence by the person taking the proceedings and it must be assumed in this case that the informant is prepared to prove that he was not aware of the offence until April 1, 1957.

3.—Husband and Wife—Adultery—Evidence of other party.

A takes out a summons in the magistrates' court alleging adultery on the part of his wife B with C. Can C at the hearing of the summons give evidence with the leave of the court but without the permission of A and B? The writer of this inquiry is under the impression that a Judge said fairly recently that C could give such evidence with the leave of the court, in view of the fact that the charge of adultery against B implicated him as well. Unfortunately, the writer of the inquiry is unable to trace this case.

GOLIAR.

Answer.

We have been unable to trace the statement referred to.

It would seem that, normally, either A or B would wish to call C. If neither does, we cannot see how the court can, although, in some quarters, this defect has been adversely commented on as the party concerned is given no right of reply to the allegations made against him.

4.—Husband and Wife—Maintenance Orders (Facilities for Enforcement) Act, 1920—Arrears due to rate of exchange.

A defendant was in 1947 ordered to pay to his wife through the court, the weekly sum of £1 for the maintenance of the children of the marriage. Subsequent to the order being made, the defendant left England and went to reside permanently in Australia.

Payment is now made by way of cheque, through the National Bank of Australasia Limited, the sum of £23 18s. 1d. being received by me periodically, instead of £30, which the defendant actually pays to the Bank of Australia, thus putting the payments

in arrear, the difference of course, being due to the rate of exchange of currency.

What is your opinion as to enforcement of the arrears accruing through the difference of currency exchange?

Y. HARDIC.

Answer.

The order having been made in this country is for English pounds sterling.

We presume the defendant has been written to and that the matter has been drawn to his attention without success.

If that is so, we think the only course remaining to try to enforce the order in full is to take steps under s. 2 of the Maintenance Orders (Facilities for Enforcement) Act, 1920, to transmit the order to Australia for registration and enforcement there. A sworn statement of the arrears due should be sent to the Home Office with the certified copy of the order.

5.—Husband and Wife—Wife divorces husband—Maintenance agreement in force—Can ex-wife apply to the magistrates' court for order on ex-husband's default in payments under the agreement?

A wife obtains a divorce against her husband, there already being in existence a maintenance agreement between the parties. The wife was content with the maintenance provided for by the agreement and did not apply for maintenance in the High Court and the time for doing so has now expired. The former husband has now defaulted under the agreement and the wife desires to apply to the magistrates for a maintenance order on the grounds of neglect to maintain in default of the provisions of the agreement being carried out. Have the magistrates jurisdiction to entertain such an application? On page 521 of *Rayden on Divorce*, 6th edn., there is a note (c) which reads "but if no application for alimony is being made in the Divorce Division an order could be made, as it is for the wife to decide which order she shall take."

HASONA.

Answer.

The note in *Rayden* clearly contemplates a situation before divorce proceedings have been brought. The woman cannot obtain an order under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, as she is no longer a married woman. She must take steps to enforce the agreement.

6.—Justices' Clerks—Part payment of fine after issue of distress or means inquiry warrants—No imprisonment imposed—Who should receive the money?

A defendant is fined £5 and allowed 14 days to pay. No period of imprisonment is imposed in default of payment. Payment is not made by the due date and a distress warrant is issued but remains un-executed. The warrant is not readily enforceable because of distance. The defendant now forwards to the clerk to the justices a sum in part payment of the amount to be levied. Rule 38 (1) appears to suggest that the clerk to justices is bound to accept the part payment. If so, the clerk would then issue a receipt to the defendant and presumably advise the police as soon as practicable of the part payment. Rule 43 (7) and (11) appears to suggest that this is the correct course, particularly if full payment is made. I feel that, in the event of part payment, the safer course, to avoid confusion, is to return the part payment to the defendant and advise him to pay the money to the police officer who executes the warrant. Rule 45 deals expressly with the position where a part payment is made, after issue of a distress warrant, in a case where alternative imprisonment has been imposed, but is not applicable to this case.

Will you also advise, please, as to the course which should be adopted, in similar circumstances, if a "warrant for arrest of defaulter" had been issued instead of a distress warrant.

J. SILVER.

Answer.

If the part payment is sent to him the clerk should accept it and send to the defaulter a receipt which can be produced to the officer holding the distress warrant. If a "means inquiry" warrant has been issued the position is the same. In either case it is important for the clerk to ensure that a message is sent promptly to the officer holding the warrant that the part payment has been made. This may perhaps best be done by a telephone message to the station to which he is attached, confirmed by a letter.

7.—Land—Purchase by corporate body—Form of conveyance—Requirement of seal.

My probacion committee have entered into a contract to purchase freehold premises. Under s. 37 (1) of the Justices of the Peace Act, 1949, the committee is a body corporate, and has power to hold land without licence in mortmain. I shall be obliged for your valued opinion as to how the conveyance should be drafted so as to vest the property in the committee, and as to how the committee (which has no corporate seal at present) should execute the conveyance.

C.J.B.

Answer.

The conveyance itself can be in simple form. We should recite the vendor's title and the statutory purpose of the acquisition. The operative clause would be to the effect that in consideration of £x (the receipt of which the vendor acknowledges) the vendor as beneficial owner conveys unto the committee all that (parcels) to hold the same in fee simple for the purpose of the committee. Unless the conveyance is to embody a covenant by the committee (e.g., against allowing nuisance) there is no need for them as purchasers to execute it. If they do execute, they must do so under seal. A corporate body entitled to a seal (and we know only one type of corporation not so entitled) ought to provide one, for obvious reasons of certainty and security, and there may in the case before us be time to obtain one before the date agreed for completing the purchase, this is on the assumption that execution by the committee is desired. There is no legal necessity for any pictorial device; a piece of metal engraved with the committee's name would be enough. Failing this, there is authority in *Touchstone* for saying that in strict law a corporation can execute a deed by means of another person's seal; obviously it must be attested as having been affixed by direction of the corporate body.

8.—Magistrates—Civil remedy—Whether exclusive of county court—Education Act, 1944, s. 52.

I have been asked to recover a sum in respect of boarding accommodation, which was originally demanded from the parent more than six months ago. Section 52 of the Education Act, 1944, provides that such a sum may be recovered summarily, as a civil debt. I have seen it contended that such a provision excludes other remedies, e.g., actions in the county court, and, as there appears to be no contractual debt, it seems reasonable to think that the only remedy available is that expressly conferred by the statute.

ABACA.

Answer.

At 120 J.P.N. 813 we answered a similar question upon s. 61 (3) of the Education Act, 1944, to the effect that the civil remedy before magistrates did not oust s. 41 of the County Courts' Act, 1934. The fact that the sum is not due under contract does not exclude that section.

9.—Magistrates—Jurisdiction and powers—Defendant appears to answer summons—Summons and information not signed by a justice—Jurisdiction to hear.

While the magistrates were retired considering a decision in a case the defendant mentioned that her summons had not been signed by a magistrate and she was informed that that defect had been remedied by her attendance in court. It was then found that the information which was signed by the superintendent of police was not signed by and possibly not laid before a magistrate. Does this constitute a defect in process to which no objection shall be allowed by virtue of s. 100 of the Magistrates' Courts Act, 1952?

INKAR.

Answer.

On the authority of *R. v. Hughes* (1879) 4 Q.B.D. 614; 43 J.P. 556, we think that unless the defendant takes formal objection to the fact that the summons is not signed, the justices have jurisdiction to hear and determine the charge. If she does take the objection, it seems that it cannot be shown that information was ever duly laid and there is no valid process on which she is then before the court. However, we see no reason why, if it is within the appropriate time limit, information should not be laid and a summons granted forthwith and served on the defendant then and there. If the defendant then asks for an adjournment this can be granted, otherwise the case can be heard.

10.—Magistrates—Practice and procedure—Separate charges of indecent assault against same defendant—Dispute as to identity—Hearing cases together without defendant's consent.

Would you kindly give me your valued opinion as to whether three separate charges, one of indecent assault and two of attempted indecent assault upon young girls, with which it is

anticipated the court will deal summarily with the consent of the accused, can be heard together without the consent of the accused. The reasons why the prosecution is applying that they be heard together are that the three girls will all give evidence of the commission or attempted commission of the same class of acts upon them, and that the evidence of each of them will go to the issue of identity (which is likely to be raised in defence). The cases of *R. v. Sims* [1946] 1 All E.R. 697; *Noor Mohamed v. R.* [1949] 1 All E.R. 365 and *R. v. Hall* (1951) 116 J.P. 43, are in point but the foundation for the decisions in each of those cases appears to have been the Indictments Act, 1915, which of course is not relevant to summary procedure. The case of *R. v. Ashbourne, JJ., ex parte Maden* (1950) 114 J.P.N. 51, also appears to be relevant and see note of same at p. 65 of *Paley on Summary Convictions*.

K. CASE.

Answer.

In *R. v. Fry and Others, ex parte Masters* (1898) 62 J.P. 457, Wills, J., said, "We should be very sorry to give any countenance to the notion that justices may mix up two criminal charges and convict or acquit in one of them with any reference to the facts appearing in the other." There is also the case of *R. v. Ashbourne, JJ.*, referred to in the question. On these authorities we think that separate informations against the same defendant cannot be tried together summarily except with his consent.

On the question of identity, the admissibility of the evidence of all three girls on the trial of an information relating to an offence against any one of them is another matter and would depend, in our view, on the circumstances in which the offences were alleged to have been committed.

11.—Road Traffic—Road fund licence in force, but licence for another vehicle displayed—Offence.

An owner of a motor-cycle being driven on a road, was noticed by the police to be displaying an expired road fund licence. On being stopped he said, "I lost the licence off this bike, so I took the one off my other bike, put it on this one, and used it." On being told he would be reported for using a road fund licence with intent to deceive, he replied, "I didn't really intend to deceive anyone." Inquiries later revealed that the motor-cycle was in fact correctly licensed.

I shall be glad of your opinion as to whether this is a case of "With intent to deceive," using a road fund licence under the Road Traffic Act, 1930, contrary to s. 112 (1), or "failing to exhibit a current road fund licence," etc., under the 1955 regulations.

Y.I.H.W.A.

Answer.

This is not a licence issued under the Road Traffic Act, 1930, so that s. 112 (1) of that Act is not applicable. The licence is issued under the Vehicles (Excise) Act, 1949. We do not think the expired licence was used "fraudulently" within the meaning of s. 21 of that Act. We are, therefore, of the opinion that this is merely a case of failing to exhibit the correct licence, contrary to reg. 4 of the Road Vehicles (Registration and Licensing) Regulations, 1955.

12.—Road Traffic Acts—Taking and driving away—Power of arrest.

I wish to refer to p. 565 of August 27, 1955, where you express the opinion that this offence is complete at the moment the vehicle is driven away, and that it is not a continuing offence.

A footnote to s. 28 (3) in *Stone* refers to s. 20 (2), Road Traffic Act, 1930, which states that a police constable may arrest the driver of a motor vehicle who within his view commits an offence. The footnote also refers to a footnote to s. 12 of the Licensing Act, 1872, which states the power of arrest may be exercised where there is an honest belief on reasonable grounds that the offence is being committed.

It has been argued that despite the wording of s. 28 (3) of the Road Traffic Act, 1930, power of arrest only exists when the offender is found committing.

Your opinion on the power of arrest after the vehicle has been driven away when the actual taking is not witnessed would be appreciated.

LONON.

Answer.

We see no reason to restrict the apparently plain meaning of the words in s. 28 (3) of the Act of 1930. We consider that if a constable reasonably suspects that an offence against s. 28 has been committed, he may arrest the suspected offender even though the actual taking is not witnessed.

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